

MARTHA J. STILLWELL, Appellant

and

**GENERAL SERVICES ADMINISTRATION,
Fort Worth, TX, Employer**

Case Submitted on the Record

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

On November 4, 2003 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated October 15, 2003. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The issues are: (1) whether the Office properly determined that appellant received an overpayment in the amount of \$2,590.14, for the period April 10, 1991 through August 9, 2003, because insurance premiums were not deducted from her compensation; (2) whether the Office abused its discretion in denying waiver of the overpayment; and (3) whether the Office properly requested repayment in the amount of \$350.00 per month.

Appellant, a 52-year-old program analyst, filed an emotional condition claim on May 30, 1991. The Office accepted the claim for aggravation of preexisting manic depression

and panic disorder. The Office commenced payment for total disability compensation and placed appellant on the periodic rolls.

On September 9, 2003 the Office issued a preliminary determination that an overpayment had occurred in the amount of \$2,590.14 for the period April 10, 1991 through May 17, 2003, because basic life insurance premiums had not been deducted from her compensation.¹ The Office found that appellant was without fault in the matter because she could not have been aware that the payments she had been receiving were incorrect. The Office advised her that if she disagreed with the fact or amount of the overpayment she could submit new evidence in support of her contention. The Office further advised appellant that, when she was found without fault in the creation of the overpayment, recovery might not be made if it could be shown that such recovery would defeat the purpose of the Federal Employees' Compensation Act or would be against equity and good conscience. The Office informed her that she had the right to request a prerecoupment hearing on the matter of the overpayment and that any response she wished to make with regard to the overpayment should be submitted within 30 days of the September 9, 2003 letter. Appellant did not respond to this request within 30 days.

In a decision dated October 15, 2003, the Office finalized its preliminary determination regarding the overpayment of \$2,590.14. The Office noted that appellant had been advised by letter dated September 9, 2003, that a preliminary finding had been made that an overpayment had occurred, but that as of the date of the final decision she had not responded. The Office determined that, therefore, appellant was not entitled to waiver and found that she should repay the overpayment at a rate of \$350.00 per month.

LEGAL PRECEDENT -- ISSUE 1

Under the Federal Employees' Group Life Insurance (FEGLI) program, most civilian employees of the federal government are eligible to participate in basic life insurance with one or more options.² The coverage for basic life is effective unless waived³ and premiums for basic and optional life coverage are withheld from the employee's pay.⁴ Under the FEGLI program, insurance remains in effect until canceled and premiums due are to be deducted from the injured employee's compensation payments. The injured employee remains responsible for all insurance premiums.

ANALYSIS -- ISSUE 1

The Board finds that the Office properly determined that appellant received an overpayment of compensation in the amount of \$2,590.14, for the period April 10, 1991 through

¹ The Office indicated that the overpayment was for the period April 10, 1991 to August 9, 2003, but it was actually for the period April 10, 1991 to May 17, 2003.

² See *James Lloyd Otte*, 48 ECAB 334, 337 (1997); Part 870 -- *Basic Life Insurance*, subpart B -- Coverage; see 5 C.F.R. § 870.201.

³ 5 C.F.R. § 870.204(a).

⁴ 5 C.F.R. § 870.401(a).

May 17, 2003. The record shows that appellant received extra compensation during the period in question because basic life insurance premiums were not deducted from her compensation. The Office calculated the \$2,590.14 overpayment by taking appellant's biweekly premium for basic life insurance for the period from April 10, 1991 through January 9, 1993, \$18.13 and multiplying it by the number of biweekly periods therein, 23, which amounted to an overpayment of \$416.99; the biweekly premium for the period from January 10, 1993 through April 24, 1999, \$16.17, times the number of biweekly periods therein, 82, which amounted to an overpayment of \$1,325.94; the biweekly premium for the period from April 25, 1999 through January 25, 2003, \$15.19, times the number of biweekly periods therein, 49, which amounted to an overpayment of \$744.31; and the biweekly premium for the period from January 26 through May 17, 2003, \$14.70, times the number of bi-weekly periods therein, 7, which amounted to an overpayment of \$102.90. Based on this determination, the Office properly found that appellant received an overpayment of compensation in the stated amount during that period.

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of the Act⁵ provides that an overpayment must be recovered unless "incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of the Act or would be against equity and good conscience." (Emphasis added.) Thus, a finding that appellant was without fault is not sufficient, in and of itself, for the Office to waive the overpayment. The Office must then exercise its discretion to determine whether recovery of the overpayment would "defeat the purpose of the Act or would be against equity and good conscience," pursuant to the guidelines provided in sections 10.436⁶ and 10.437⁷ of the implementing federal regulation.

With regard to the "defeat the purpose of the Act" standard, section 10.436 of the regulation provides:

"Recovery of an overpayment will defeat the purpose of the [Act] if such recovery would cause hardship to a currently or formerly entitled beneficiary because:

- (a) The beneficiary from whom [the Office] seeks recovery needs substantially all of his or her current income (including compensation benefits) to meet current ordinary and necessary living expenses; and
- (b) The beneficiary's assets do not exceed a specified amount as determined by [the Office] from data furnished by the Bureau of Labor Statistics. A higher amount is specified for a beneficiary with one or more dependents."

⁵ 5 U.S.C. § 8129(a)-(b).

⁶ 20 C.F.R. §§ 10.436.

⁷ 20 C.F.R. § 10.437.

With regard to the “against equity and good conscience” standard, section 10.437 of the regulation provides:

“(a) Recovery of an overpayment is considered to be against equity and good conscience when any individual who received an overpayment would experience severe financial hardship in attempting to repay the debt.

“(b) Recovery of an overpayment is also considered to be against equity and good conscience when any individual, in reliance on such payments or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse. In making such a decision, [the Office] does not consider the individual’s current ability to repay the overpayment.

(1) To establish that a valuable right has been relinquished, it must be shown that the right was in fact valuable; that it cannot be regained; and that the action was based chiefly or solely in reliance on the payments or on the notice of payment. Donations to charitable causes or gratuitous transfers of funds to other individuals are not considered relinquishments of valuable rights.

(2) To establish that an individual’s position has changed for the worse, it must be shown that the decision made would not otherwise have been made but for the receipt of benefits and that this decision resulted in a loss.”

A finding that appellant was without fault is not sufficient, in and of itself, for the Office to waive the overpayment.⁸ The Office must exercise its discretion to determine whether recovery of the overpayment would “defeat the purpose of the Act or would be against equity and good conscience” pursuant to the guidelines provided in sections 10.434-437 of the implementing federal regulations.⁹

Office regulation provide that recovery of an overpayment will defeat the purpose of the Act if such recovery would cause hardship to a currently or formerly entitled beneficiary because: (a) the beneficiary from whom the Office seeks recovery needs substantially all of his or her current income (including compensation benefits), to meet current or ordinary and necessary living expenses; and (b) the beneficiary’s assets do not exceed a specified amount as determined by the Office from data furnished by the Bureau of Labor Statistics.¹⁰ The Board has found that an individual is deemed to need substantially all of his or her income to meet current ordinary and necessary expenses by more than \$50.00.¹¹ Additionally, the guidelines for recovery of an overpayment from an individual must meet both conditions to find that recovery

⁸ *James Lloyd Otte*, *supra* note 2; *see William J. Murphy*, 40 ECAB 569, 571 (1989).

⁹ 20 C.F.R. § 10.434-437 (1999).

¹⁰ *Frederick Arters*, 53 ECAB __ (Docket No. 01-1237, issued February 27, 2002).

¹¹ *Id.*

of the overpayment should be waived on the basis that it would defeat the purpose of the Act. Consequently, to establish that recovery would defeat the purpose of the Act, the facts must show that appellant needs substantially all of his or her income to meet current ordinary and necessary living expenses and also that his or her assets, those which are not exempted, do not exceed a resource base.¹²

Office procedures provide that recovery will defeat the purpose of the Act if the individual's assets do not exceed the resource base of \$3,000.00 for an individual or \$5,000.00 for an individual with a spouse or one dependent, plus \$600.00 for each additional dependent. This base includes all of the claimant's assets that are not exempted from recoupment.¹³ The first \$3,000.00 or more, depending on the number of the individual's dependents, is also exempted from recoupment as a necessary emergency resource.¹⁴

Section 20 C.F.R. § 10.438¹⁵ states:

“(a) The individual who received the overpayment is responsible for providing information about income, expenses and assets as specified by [the Office]. This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of the [Act] or be against equity and good conscience. This information will also be used to determine the repayment schedule, if necessary.

“(b) Failure to submit the requested information within 30 days of the request shall result in denial of waiver and no further request for waiver shall be considered until the requested information is furnished.”

ANALYSIS -- ISSUE 2

In the instant case, appellant did not submit any information regarding her financial situation within 30 days in response to the Office's September 9, 2003 letter regarding her overpayment of compensation. She thus, failed to submit sufficient evidence showing that she needs substantially all of the current monthly income to meet living expenses or that the amount

¹² John Skarbek, 53 ECAB __ (Docket No. 01-1396, issued June 21, 2002).

¹³ The Office procedure manual provides that an individual's assets include liquid assets such as cash on hand, the value of stocks, bonds, savings accounts, mutual funds, certificates of deposit and the like and nonliquid assets such as the fair market value of an owner's equity in property such as a camper, boat, second home and furnishings/supplies therein, any vehicles above the two allowed per family, jewelry, artwork, etc. Assets do not include the value of household furnishing of the primary residence, wearing apparel, one or two vehicles, family burial plot or prepaid burial contract, a home which is maintained as the principal family domicile or income from income-producing property if the income from such property has been included in comparing income and expenses. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Waiver of Recovery*, Chapter 6.200.6.a(4) (September 1994).

¹⁴ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Waiver of Recovery*, Chapter 6.200.6.a(1)(b) (September 1994).

¹⁵ 20 C.F.R. § 10.438.

of the overpayment was wrongly computed, as requested by the Office in its September 9, 2003 letter. Therefore, appellant does not qualify for waiver under the “defeat the purpose of the Act” standard. Further, there is no evidence in this case, nor did she allege, that she relinquished a valuable right or changed his position for the worse in reliance on the excess compensation she received from April 10, 1991 through May 17, 2003. Accordingly, the Office properly found that appellant’s failure to respond to its September 9, 2003 letter by submitting the requested financial information after informing him that she had 30 days in which to respond and submit evidence supporting a waiver, was sufficient grounds to find that she does not qualify for waiver. Pursuant to its regulations, the Office, therefore, did not abuse its discretion by issuing its October 15, 2003 final decision denying waiver of recovery of the overpayment in the amount of \$2,590.14.

LEGAL PRECEDENT -- ISSUE 3

With regard to the method determined by the Office to recover the amount of the overpayment, section 10.441(a) of Office regulations provides:

“When an overpayment has been made to an individual who is entitled to further payments, the individual shall refund to [the Office] the amount of the overpayment as soon as the error is discovered or his or her attention is called to same. If no refund is made, [the Office] shall decrease later payments of compensation, taking into account the probable extent of future payments, the rate of compensation, the financial circumstances of the individual and any other relevant factors, so as to minimize any hardship. Should the individual die before collection has been completed, collection shall be made by decreasing later payments, if any, payable under the Act with respect to the individual’s death.”¹⁶

ANALYSIS -- ISSUE 3

In this case, the Office mandated that the sum of \$350.00 be withheld from appellant’s continuing compensation each month, with interest, in order to repay the overpayment. Since appellant did not submit any financial data, there is not sufficient information for the Board to perform an analysis of the reasonableness of the monthly recovery rate of \$350.00. Appellant has, therefore, not shown that the Office abused its discretion in withholding \$350.00 from her monthly compensation payments.

CONCLUSION

The Board finds that the Office properly determined that appellant received an overpayment of compensation in the amount of \$2,590.14 for the period from April 10, 1991 through August 9, 2003. The Board finds that the Office did not abuse its discretion in denying waiver of the overpayment in the amount of \$2,590.14 after finding that appellant was without fault with respect to that overpayment. The Board finds that the Office properly required monthly repayment in the amount of \$350.00.

¹⁶ 20 C.F.R. § 10.441(a).

ORDER

IT IS HEREBY ORDERED THAT the October 15, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 9, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member